



Billing Code: 4310-55

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS-R2-ES-2012-N294]

[FXES11120200000F2-134-FF02ENEH00]

Final Environmental Impact Statement and Record of Decision on the Edwards Aquifer Recovery Implementation Program Habitat Conservation Plan for Incidental Take of 11 Species (8 Federally Listed) in 8 Texas Counties

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: We, the U.S. Fish and Wildlife Service, under the National Environmental Policy Act of 1969, make available the final environmental impact statement (EIS) and record of decision analyzing the impacts of the issuance of an incidental take permit for implementation of the final Edwards Aquifer Recovery Implementation Program (EARIP) Habitat Conservation Plan (HCP). Our decision is to issue a 15-year incidental take permit to the EARIP for implementation of the preferred alternative (described

below), which authorizes incidental take of animal species and impacts to plant species listed under the Endangered Species Act of 1973, as amended. The EARIP has agreed to implement avoidance, minimization, and mitigation measures to offset impacts to these species, as described in their HCP.

DATES: We are issuing the Record of Decision (ROD) with this notice, and a final permit will not become effective sooner than 30 days after publication of this notice. We must receive any comments on the final EIS and HCP by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may obtain copies of the final documents by going to *<http://www.fws.gov/southwest/es/AustinTexas/>*. Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin TX 78758; by calling (512) 490-0057; or by faxing (512) 490-0974. Written comments may be submitted to Mr. Adam Zerrenner (see address above). For additional information about where to review documents, see “Reviewing Documents” under

SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT: Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road, Suite 200, Austin, TX 78758 or (512) 490-0057.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service (Service), announce the availability of the final environmental impact statement (EIS) and record of decision (ROD), which we developed in compliance with the agency decision-making requirements of the National Environmental Policy Act of 1969, as amended (NEPA), as well as the final Edwards Aquifer Recovery Implementation Program (EARIP) Habitat Conservation Plan (HCP) as submitted by the applicants. All alternatives have been described in detail, evaluated, and analyzed in our December 2012 final EIS and the EARIP HCP. The ROD documents the rationale for our decision.

Based on our review of the alternatives and their environmental consequences as described in our final EIS, we have selected Alternative 2, the proposed HCP. The proposed action is to issue to the EARIP applicants an incidental take permit (ITP) under section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), that authorizes incidental take of animal species and impacts to plant species. The term of the permit is 15 years (2013-2028), and would include the following endangered, threatened, and non-listed species (also referred to as “covered species”):

Endangered:

Texas wild rice (*Zizania texana*)

Comal Springs riffle beetle (*Heterelmis comalensis*)

Comal Springs dryopid beetle (*Stygoparnus comalensis*)

Peck’s Cave amphipod (*Stygobromus pecki*)

Fountain darter (*Etheostoma fonticola*)

Texas blind salamander (*Eurycea [=Typhlomolge] rathbuni*)

San Marcos gambusia (*Gambusia georgei*)

Threatened:

San Marcos salamander (*Eurycea nana*)

Non-listed Species:

Texas cave diving beetle (*Haideoporus texanus*)

Texas troglobitic water slater (*Lirceolus smithii*)

Comal Springs salamander (*Eurycea* sp.)

Take of listed plant species is not defined in the Act, although the Act does identify several prohibitions. However, because covered species in the EARIP HCP include both plants and animals, in the following discussion we use the term “incidental take” when discussing impacts to covered plants, as well as actual incidental take of covered animals.

The EARIP will implement avoidance, minimization, and mitigation measures to offset impacts to the covered species according to their HCP. The minimization and mitigation measures include spring flow and habitat protection. Spring flow protection measures will ensure that no interruption of flow at springs will occur during wet, normal, or drought conditions. Habitat protection measures will restore and enhance aquatic and riparian habitat in the Comal and San Marcos River systems.

Background

The EARIP has applied for an incidental take permit (TE63663A-0, ITP) under the Endangered Species Act of 1973, as amended (Act), that would authorize incidental take of animal species and impacts to plant species (covered species) in all, or portions, of eight Texas counties. The requested ITP, which will be in effect for a period of 15

years, will authorize incidental take of seven federally listed animal species and impacts to one listed plant species, and would cover three non-listed species. The proposed incidental take could occur within Bexar, Medina, and Uvalde Counties, and portions of Atascosa, Caldwell, Comal, Guadalupe, and Hays Counties in Texas (permit area), and would result from activities associated with otherwise lawful activities, including the regulation and use of groundwater for irrigation, industrial, municipal, domestic, and livestock purposes; the use of instream flows in the Comal River and San Marcos River for recreational uses; and other operational and maintenance activities that could affect Comal Springs, San Marcos Springs, and their associated river systems (covered activities). The final EIS considers the direct, indirect, and cumulative effects of implementation of the HCP, including the measures that will be implemented to minimize and mitigate such impacts to the maximum extent practicable. Incidental take coverage is also provided for any take of covered species that may occur during species management and habitat restoration and management activities related to the minimization and mitigation proposed within the HCP.

On July 20, 2012, we issued a draft EIS and requested public comment on our evaluation of the potential impacts associated with issuance of an ITP for implementation of the HCP and to evaluate alternatives, along with the draft HCP (77 FR 42756). We included public comments and responses associated with the draft EIS and draft HCP in the final EIS.

Purpose and Need

The purpose of the section 10(a)(1)(B) permit is to authorize incidental take associated with the covered activities described above. We identified key issues and relevant factors through conducting public scoping and public meetings, working with other agencies and groups, and reviewing comments from the public. In response to the publication of the draft EIS and draft HCP, we received responses from 3 Federal agencies, 2 State agencies, and 25 other organizations and individuals. The Environmental Protection Agency had “no objections” to the implementation of the preferred alternative. The National Resources Conservation Service agreed with the selection of Alternative 2 as the preferred alternative. The National Park Service stated that they had no comments. The Texas Commission on Environmental Quality supported the selection of the HCP as the preferred alternative. The Texas Parks and Wildlife Department stated that they support the HCP and the DEIS, and provided minor edits and specific clarifying comments intended to improve the documents. Comments from individuals and non-profit organizations provided support for the HCP and the EIS selection of the preferred alternative. Aside from minor edits or suggested clarifications, no substantive comments were received on the draft HCP or the draft EIS.

Alternatives

We considered four alternatives in the EIS.

Alternative 1 – No action Alternative: Under the No Action Alternative, the Service would not issue an incidental take permit for the EARIP HCP.

Alternative 2 – Preferred Alternative: Our selected alternative is the proposed HCP with a 15-year term, and the preferred alternative as described in the final EIS, which provides for the issuance of an ITP to the EARIP Applicants for incidental take of covered species that may occur as a result of covered activities. This alternative includes a number of measures to maintain or manage springflow, including Critical Period Management (CPM) pumping restrictions, management of an Aquifer Storage and Recharge (ASR) facility to meet water demand that offsets reduced pumping from the Edwards Aquifer near the springs during drought, a Voluntary Irrigation Suspension Program that provides economic incentives to reduce pumping for irrigated agriculture during drought conditions, and a Regional Water Conservation Program. The HCP also provides for habitat restoration and management measures that minimize and mitigate impacts from the potential incidental take to the maximum extent practicable.

Alternative 3 – Expanded ASR Program: This alternative would result in the construction of new infrastructure to inject water stored in an expanded ASR into the aquifer to maintain springflow. It includes issuance of an ITP and implementation of an HCP incorporating expanded aquifer storage and recharge actions and CPM pumping restrictions to achieve springflow and covered species protections.

Alternative 4 – Highest Pumping Restriction: Alternative 4 would implement the most restrictive pumping regulations to maintain spring flows protective of the covered species.

Decision

We intend to issue an ITP to the EARIP applicants for implementation of the preferred alternative (Alternative 2) as it is described in the HCP. Our decision is based on a thorough review of the alternatives and their environmental consequences.

Implementation of this decision entails issuance of the ITP by the Service and full implementation of the HCP by the EARIP, including minimization and mitigation measures, monitoring and adaptive management, and complying with all terms and conditions in the ITP.

Rationale for Decision

We have selected the preferred alternative (Alternative 2) for implementation based on multiple environmental and social factors, including potential impacts and benefits to covered species and their habitats; the extent and effectiveness of avoidance, minimization, and mitigation measures; and social and economic considerations. We did not choose the No Action Alternative, because, as compared with the preferred alternative, it does not protect listed species from potential take from covered activities. We did not choose the Expanded ASR Program (Alternative 3) because of the uncertainties related to the effectiveness of the Expanded ASR Program regarding effects to listed species and the economic impacts to water users throughout the region are greater than those anticipated under Alternative 2. Alternative 4 would curtail pumping more than the preferred alternative, causing the greatest economic impact on water users of any of the alternatives, and was therefore not selected.

In order to issue an ITP we must ascertain that the HCP meets the issuance criteria set forth in 16 U.S.C. 1539(a)(2)(A) and (B). We have made that determination based on the criteria summarized below.

1. *The taking will be incidental.* We find that take will be incidental to otherwise lawful activities, including the applicants' regulation of groundwater, use of surface water for recreational activities, and the operation and maintenance of facilities to withdraw and convey groundwater.
2. *The applicants will, to the maximum extent practicable, minimize and mitigate the impacts of such takings.* The EARIP has developed and is committed to implementing a program that includes a variety of habitat and springflow protection measures. These measures will ensure that water continues to flow from springs to protect species that rely on the flow of water for their survival.
3. *The applicants will develop an HCP and ensure that adequate funding for the HCP will be provided.* The applicants have developed an HCP, which includes a detailed estimate of the costs of implementing the HCP (see Chapter 7 of the HCP). The funding necessary to pay for implementing the HCP will come from water user fees and from other sources, including several municipalities that benefit from HCP implementation, but are not assessed water user fees.
4. *The taking will not appreciably reduce the likelihood of survival and recovery of any listed species in the wild.* As the Federal action agency considering whether to issue an ITP to the EARIP, we have reviewed the proposed action under section 7 of the Act. Our biological opinion, dated January 3, 2013, concluded that issuance of the ITP will not jeopardize the continued existence of the covered species in the wild. No areas

designated as critical habitat will be adversely modified. The biological opinion also analyzes other listed species within the planning area and concludes that the direct and indirect effects from implementation of the HCP will not appreciably reduce the likelihood of survival and recovery of other listed species or adversely modify any designated critical habitat within the permit area.

5. The applicants agree to implement other measures that the Service requires as being necessary or appropriate for the purposes of the HCP. We have assisted the EARIP in the development of the HCP. We commented on draft documents, participated in numerous meetings, and worked closely with the EARIP throughout the development of the HCP so conservation of covered species would be assured and recovery would not be precluded by the covered activities. The HCP incorporates our recommendations for minimization and mitigation of impacts, as well as steps to monitor the effects of the HCP and ensure success. Annual monitoring, as well as coordination and reporting mechanisms, have been designed to ensure that changes in the conservation measures can be implemented if proposed measures prove ineffective (adaptive management).

We have determined that the preferred alternative best balances the protection and management of habitat for covered species, while providing compliance with the Act for withdrawal and use of Edwards Aquifer water in the permit area. Considerations used in this decision include whether (1) mitigation will benefit the covered species, (2) adaptive management of the conservation measures will ensure that the goals and objectives of the HCP are realized, (3) conservation measures will protect and enhance habitat, (4) mitigation measures for the covered species will fully offset anticipated impacts to

species and provide recovery opportunities, and (5) the HCP is consistent with the covered species' recovery plans.

A final permit decision will be made no sooner than 30 days after the publication of this notice of availability.

Reviewing Documents

You may obtain copies of the final EIS, ROD, and final HCP by going to <http://www.fws.gov/southwest/es/AustinTexas/>. Alternatively, you may obtain a compact disk with electronic copies of these documents by writing to Mr. Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin TX 78758; by calling (512) 490-0057; or by faxing (512) 490-0974. A limited number of printed copies of the final EIS and final HCP are also available, by request, from Mr. Zerrenner. Copies of the final EIS and final HCP are also available for public inspection and review at the following locations (by appointment only):

- Department of the Interior, Natural Resources Library, 1849 C St. NW., Washington, DC 20240.
- U.S. Fish and Wildlife Service, 500 Gold Avenue SW., Room 6034, Albuquerque, NM 87102.
- U.S. Fish and Wildlife Service, 10711 Burnet Road Suite 200, Austin, TX 78758.

Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 6034, Albuquerque, NM 87103.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publically available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 et seq.) and its implementing regulations (50 CFR 17.22 and 17.32), and the National Environmental Policy Act (42 U.S.C. 4321 et seq.) and its implementing regulations (40 CFR part 1506.6).

Joy E. Nicholopoulos

Acting Regional Director,

Southwest Region,

Albuquerque, New Mexico.